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(2) Define and regulate the activities in which savings and loan holding companies may engage;

(3) Set forth the procedures for securing approval for these transactions and activities; and

(4) Set forth the procedures under which directors and executive officers may be appointed or employed by savings and loan holding companies in certain circumstances.

§ 238.2 Definitions.

As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(a) *Affiliate* means any person or company which controls, is controlled by or is under common control with a person, savings association or company.

(b) *Bank* means any national bank, state bank, state-chartered savings bank, cooperative bank, or industrial bank, the deposits of which are insured by the Deposit Insurance Fund.

(c) *Bank holding company* has the meaning found in the Board's Regulation Y (12 CFR 225.2(c)).

(d) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in paragraph (o) of this section; but a company does not include:

(1) The Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or any Federal Home Loan Bank, or

(2) Any company the majority of shares of which is owned by:

(i) The United States or any State,

(ii) An officer of the United States or any State in his or her official capacity, or

(iii) An instrumentality of the United States or any State.

(e) A person shall be deemed to have control of:

(1) A savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of

a majority of the directors of such association;

(2) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

(3) A trust if the person is a trustee thereof; or

(4) A savings association or any other company if the Board determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

(f) *Director* means any director of a corporation or any individual who performs similar functions in respect of any company, including a trustee under a trust.

(g) *Management official* means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a savings association or a company, whether or not incorporated.

(h) *Multiple savings and loan holding company* means any savings and loan holding company which directly or indirectly controls two or more savings associations.

(i) *Officer* means the chairman of the board, president, vice president, treasurer, secretary, or comptroller of any company, or any other person who participates in its major policy decisions.

(j) *Person* includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(k) *Qualified thrift lender* means a financial institution that meets the appropriate qualified thrift lender test set forth in 12 U.S.C. 1467a(m).

(l) *Savings Association* means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or any cooperative bank which is deemed by the Office of the Comptroller of the Currency to be a savings association under 12 U.S.C. 1467a(1).

(m) *Savings and loan holding company* means any company (including a savings association) that directly or indirectly controls a savings association, but does not include:

(1) Any company by virtue of its ownership or control of voting stock of a savings association acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Board) as will permit the sale thereof on a reasonable basis;

(2) Any trust (other than a pension, profit-sharing, stockholders', voting, or business trust) which controls a savings association if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and:

(i) Was in existence and in control of a savings association on June 26, 1967, or

(ii) Is a testamentary trust;

(3) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly

controlled by such company (other than a savings association);

(4) A company that controls a savings association that functions solely in a trust or fiduciary capacity as provided in section 2(c)(2)(D) of the Bank Holding Company Act; or

(5) A company described in section 10(c)(9)(C) of HOLA solely by virtue of such company's control of an intermediate holding company established under section 10A of the Home Owners' Loan Act.

(n) *Shareholder*—(1) *Controlling shareholder* means a person that owns or control, directly or indirectly, more than 25 percent of any class of voting securities of a savings association or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a savings association or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a savings association or other company.

(o) *Stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(p) *Subsidiary* means any company which is owned or controlled directly or indirectly by a person, and includes any service corporation owned in whole or in part by a savings association, or a subsidiary of such service corporation.

(q) *Uninsured institution* means any financial institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(r)(1) *Voting securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares*. Preferred shares, limited partnership shares or interests,

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or similar interests are not *voting securities* if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

(3) *Class of voting shares.* Shares of stock issued by a single issuer are deemed to be the same class of voting shares, regardless of differences in dividend rights or liquidation preference, if the shares are voted together as a single class on all matters for which the shares have voting rights other than matters described in paragraph (r)(2)(i) of this section that affect solely the rights or preferences of the shares.

(s) *Well capitalized.* (1) A savings and loan holding company is well capitalized if:

(i) Each of the savings and loan holding company's depository institutions is well capitalized; and

(ii) The savings and loan holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

(2) In the case of a savings association, "well capitalized" takes the meaning provided in § 225.2(r)(2) of this chapter.

(t) *Well managed.* The term "well managed" takes the meaning provided in § 225.2(s) of this chapter except that a "satisfactory rating for manage-

ment" refers to a management rating, if such rating is given, or otherwise a risk-management rating, if such rating is given.

(u) *Depository institution.* For purposes of this part, the term "depository institution" has the same meaning as in section 3(c) of Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

§ 238.3 Administration.

(a) *Delegation of authority.* Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation, in the Board's Rules Regarding Delegation of Authority (12 CFR part 265), the Board's Rules of Procedure (12 CFR part 262), and in Board orders.

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, unless a different Federal Reserve Bank is designated by the Board, the appropriate Federal Reserve Bank is as follows:

(1) For a savings and loan holding company (or a company applying to become a savings and loan holding company): the Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary savings association on the date it became (or will become) a savings and loan holding company;

(2) For an individual or company submitting a notice under subpart D of this part: The Reserve Bank of the Federal Reserve district in which the banking operations of the savings and loan holding company to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

§ 238.4 Records, reports, and inspections.

(a) *Records.* Each savings and loan holding company shall maintain such books and records as may be prescribed by the Board. Each savings and loan holding company and its non-depository affiliates shall maintain accurate and complete records of all business transactions. Such records shall support and be readily reconcilable to any regulatory reports submitted to the